

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1727 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JADIBEN CHIMANLAL JADAV WIDOW OF LATE CHIMANLAL MAGANLAL

Versus

UNION OF INDIA

Appearance:

MR NM KAPADIA for Petitioner

Ms.Dawawala for Respondent No. 1

Mr.B.Y.Mankad, learned AGP for Respondent No. 2

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 19/07/1999

ORAL JUDGEMENT

1. Through this Special Civil Application a 90 years old widow of a late freedom fighter, namely, Chimanlal Maganlal Jadav, who died on 3.4.92, is claiming Swatantra Sainik Samman Pension. The petitioner's case is that her husband took active part in the Quit India movement of 1942 and she too had taken part in the said movement. The petitioner's husband lost his job as a Primary

Teacher on 2.12.42. Later on the petitioner's husband was taken back in service by an order dt.17.5.46, but he was not paid the salary and allowances for the intervening period i.e. 2.12.42 to 17.5.46. Whereas she herself had taken part in the aforesaid movement, she says that she was granted pension from the discretionary fund of the Government of Gujarat vide order dt.31.1.96 with effect from 1.2.96. The amount of this pension was fixed at Rs.750/- P.M. with the stipulation that it will be paid till pension is sanctioned by the Government of India. This is the pension, which is paid to the petitioner by the Government of Gujarat for her own active participation in the movement. The petitioner's prayer in this petition is that the pension be paid to her as the widow of a Swatantra Sainik Senani. The fact that petitioner's husband was a freedom fighter is evidenced by the Card issued by the Collector, Ahmedabad, xerox copy of which has been annexed with the petition as Annexure 'E', in which it has been clearly mentioned that Chimanlal Maganlal Jadav is a freedom fighter. The petitioner made an application before the respondent No.1 in her capacity as widow of a freedom fighter and claimed the pension of Swatantra Sainik Samman and it is her case that this application moved by her before the Union of India is supported by all the documents. Such Application was moved on 29.12.95, but the only reply, which was received by her, is the reply dt.6.8.96. The contents of the copy of this letter annexed at Annexure 'D' to the petition show that the Ministry of Home Affairs, Government of India has itself considered the case and the factual position is admitted by the Government of India that according to the order dt.22.2.74 issued by the Administrative Officer, Office of Nagar Prathmik Shikshan Samiti Karyalaya, Municipal School Board, Ahmedabad, the petitioner's husband was dismissed from service with effect from 28.12.42 vide School Board Resolution No.137 dated 28.11.42 for taking part in August 1942's freedom fight. This movement of 1942 was nothing else, but the Quit India movement. This letter shows that the dismissal order was cancelled by the School Board vide Resolution No.47 dt.17.5.46 and General Board Resolution No.286 dt.24.6.46. It is then stated in this letter that the petitioners husband had resumed duty from 17.5.46 and the period of absence was counted as on duty and this period of break in service was treated as on duty and, therefore, the claim of loss of job was not established and on that basis, she was informed that she has not been considered to be eligible for grant of pension under the SSS Pension Scheme of 1980. Aggrieved from the denial of SSS Pension, as such, the petitioner has filed the present Special Civil

Application in this Court on 9.3.99. On 23.3.99 the notice was issued to the respondents to show cause as to why this Special Civil Application may not be admitted, heard and finally disposed of at the admission stage on the returnable date of 28.4.99. This order dt.23.3.99 passed by this Court is as good as Rule because the notice was for final disposal at admission stage. In response to this notice, after taking opportunity for filing the reply, a written reply has been filed on behalf of respondent No.1 under signatures of the Deputy Secretary, Ministry of Home Affairs. The respondent No.1 - Union of India has taken the stand that the Government of Gujarat vide letter dt.19.2.96 had forwarded the application of the petitioner dt.29.12.95 for grant of Samman Pension from Central Revenues on the basis of her late husband's loss of job as Assistant Teacher and the case was reviewed by the Ministry afresh and it was rejected for the second time on 6.8.98 for the reason that her husband was dismissed from service, but the dismissal order was subsequently cancelled, as stated above, and her husband had resumed duty on 17.5.46 and the period of absence was counted as on duty and, therefore, her late husband's claim of loss of job was not established. It has also been stated in Para 13 of the affidavit-in-reply that petitioner's late husband had first applied for grant of Samman Pension on 23.3.74 under the old pension Scheme of 1972 and his claim was rejected for the first time on 4.7.74 as her late husband's annual income exceeded the then prescribed limit of Rs.4,999/- and her case was rejected by Ministry on 6.8.98 as her late husband's claim of loss of job was not established. Thus the case against the petitioner, as it appears from the pleadings of the respondent No.1, is that the petitioner's claim has been rejected on the ground that the petitioner's husband did not suffer loss of job because the dismissal order was revoked and her husband was reinstated and he resumed back.

2. Petitioner has categorically stated in para 2 of the petition at page 3 that although the period of absence between 1942 and 1946 was not treated as a break and her husband was treated to be on duty for this period of absence, the fact remains that he was not paid any wages, allowances, etc. for the intervening period i.e. from 28.12.42 to 17.5.46. This fact has also been sought to be supported and established through a copy of the document placed at Annexure 'C' dt.25.6.81. Thus the participation by the petitioner's husband in the freedom struggle and Quit India movement of 1942 has not been disputed and it is also established that for the period of his absence he was not paid the pay and allowances

etc.

3. Learned counsel for the respondent has submitted that because the dismissal order had been revoked, the petitioner's husband was reinstated and he was continued in service and the period of absence was treated as on duty, the petitioner's husband was not entitled to any pension from SSS Scheme as claimed by her under the SSS Scheme of 1980.

4. I have considered the submissions made on behalf of both the sides.

5. Here is not a case in which the petitioner is claiming pension as a widow of a Government servant. As per certificate, for the period of absence he has been treated to be on duty but that has nothing to do with the amount to be paid to her as SSS pension. In fact and in strict sense of the term, it is not even a pension. This amount, which is being claimed as SSS, is an amount in token of the recognition of the sacrifice made by her husband for the cause of freedom and his active participation in the freedom struggle i.e. Quit India movement of 1942 and for the sufferings, which he undergone during that period. Even if the petitioner's husband would not have taken part in the freedom struggle, he would have got the pension as a Government servant. The Circular on which reliance is placed by learned counsel for the respondent No.1 only shows that through that Circular (although the same has not been formally placed on record on behalf of respondents) it was made possible for the petitioner's husband to draw the pension as a Government servant despite break in service with the benefit of the period of break. It only affords protection against break in service suffered on account of the participation in the freedom struggle so as to make it possible for such Government servants also to draw the pension, as if they had not suffered any break, because in absence of such a Circular, they could not be paid pension for the period of break in service unless the break was condoned and, therefore, in order to overcome such a situation, it was provided that they may also get the pension as if there was no break because the break was the direct result of participation in the freedom struggle. The question of getting any monetary benefit as SSS i.e. Swatantra Sainik Samman is entirely different than the right of a Government servant to get pension as a Government servant. Once it is not disputed that the petitioner's husband had taken active part in the freedom struggle and that he also did not receive the wages for the period from the date of dismissal in 1942

to the date of reinstatement in 1946 and once he has been recognised as a freedom fighter, as is clearly evident by the card issued by the Collector, Ahmedabad and the contents of the reply dt.6.8.96 sent by the Ministry of Home Affairs to the petitioner, there is no question of denial of SSS Pension to her as the widow of a freedom fighter.

6. In this regard, the learned counsel for the petitioner has placed reliance on a decision of this court in the case of Late Ambalal Ratnabhai v. Government of India, reported in 1995(1) GLR 289. The observations made in Paras 12 and 13 of this judgment, based on the Supreme Court decision in the case of Narayanan v. Union of India, reported in AIR 1990 SC 746, is that the Swatantra Sainik Samman Pension Scheme was formulated and introduced with a view to acknowledge the services rendered to the country by patriotic citizens during the freedom movement and who had suffered at the hands of British Rulers in one way or the other and to compensate them in some measure for their sacrifices for the sake of the country. It was also noted in this decision that a plain reading of sub-clause (f) with the objects of the Scheme only suggests that the persons who lost their jobs irrespective of the fact that they were reinstated later on, on account of their sufferings will be covered by sub-clause (f). Whereas this pension is not only a compensation but an honour for the services rendered by such citizens and the arrears of the pay had not been given despite the reinstatement, such clause would apply to cases like the present one where the reinstatement had been ordered, but arrears had not been paid.

7. It is a dismal fact that the petitioner at this age had to approach this Court for the purpose of getting SSS Pension under the 1980 Scheme, to which she was fully entitled and yet denied by the respondent No.1. Such a just and honest claim of the petitioner should have been accepted by the respondent No.1 and it was not at all a case for showing a litigious perseverance to resist the just and honest claim of the widow of a freedom fighter for no legal justification. In the facts and circumstances of this case, the communication dt.6.8.98 is held to be illegal and the same is set aside. The respondent - Union of India is directed to grant the SSS Pension to the petitioner under the SSS Pension Scheme of 1980 from the date of her entitlement with interest at the rate of 12 per cent per annum from the date of her application. The entire amount shall be paid at the earliest possible opportunity but in no case later than

two months from the date the certified copy of this order is produced before the concerned authorities. This Special Civil Application is allowed accordingly and it is further ordered that in case the respondents fail to pay the due amount as aforesaid to the petitioner within a period of two months, as stated above, the petitioner shall also be entitled to the interest on the due amount at the rate of 18 per cent per annum from the date of the expiry of two months. Rule is made absolute in the terms, as aforesaid. No order as to costs.